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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91188901
Party	Defendant Lee, Jeremy McNeill
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Submission	Answer
Filer's Name	Jeremy McNeill Lee
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Date	03/24/2009
Attachments	DRUNKWALL_FinalAnswer.pdf (16 pages)(578248 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Answer

Notice is hereby given that the following party answers the opposition.

Applicant Information

Application No: 77482477

Publication date: 10/21/2008

Applicant: Lee, Jeremy McNeill

520 Lakewood Circle

Walnut Creek, CA 94598

UNITED STATES

Opposer Information:

Name: Facebook Inc.

Address: 156 University Ave.

Palo Alto, CA 94306

UNITED STATES

Attorney Information:

Class 042.

All goods and services in the class are opposed, namely: Providing on-line non-downloadable software for the enhancement of the experience of online browsing of products and services and shopping by allowing users to deliver and receive recommendations, reviews and advice on social networking sites, and providing on-line non-downloadable computer programs for sending, creating, receiving, customizing and personalizing digital images, computer graphics, text, metadata, video and photographs, and hyperlinks and hyperlinked files, via a computer and communications network

Grounds stated by Opposer:

Priority and likelihood of confusion

Mark cited by Opposer: 78920335

U.S. Registration No.

Application Date 06/29/2006

Registration Date: NONE

Foreign Priority

Date: NONE

Word Mark: THE WALL

Design Mark

Description of Mark: NONE

Goods/Services Class

Class 035. First use:

Providing an online directory information service featuring information regarding, and in the nature of, collegiate life, general interest, classifieds, virtual community, social networking, photo sharing, and transmission of photographic images; advertising and information distribution services, namely, providing classified advertising space via the global computer network; promoting the goods and services of others over the Internet

Class 038. First use:

Providing online chat rooms and electronic bulletin boards for registered users for transmission of messages concerning collegiate life, general interest, classifieds, virtual community, social networking, photo sharing, and transmission of photographic images

Class 042. First use:

Computer services, namely, hosting online web facilities for others for organizing and conducting online meetings, gatherings, and interactive discussions; and computer services in the nature of customized web pages featuring user-defined information, personal profiles and information

Class 045. First use:

Internet based introduction and social networking services

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature /Jeremy M.Lee/

Name: Jeremy McNeill Lee

Date 3/24/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X

FACEBOOK INC., Opposer
-v-

JEREMY MCNEILL LEE, Applicant.

-----X

ANSWER TO OPPOSITION

Applicant, Jeremy McNeill Lee, an individual, believes that registration of the mark shown in Serial No. 77482477 will not harm the Opposer, Facebook Inc. as the Drunk Wall mark is distinctive to Facebook's pending Wall mark.

DESCRIPTION OF APPLICATION

The application is for the mark is DRUNK WALL (unstylized) covering services in Class 42, described in the application as "Providing on-line non-downloadable software for the enhancement of the experience of online browsing of products and services and shopping by allowing users to deliver and receive recommendations, reviews and advice on social networking sites, and providing on-line non-downloadable computer programs for sending, creating, receiving, customizing and personalizing digital images, computer graphics, text, metadata, video and photographs, and hyperlinks and hyperlinked files, via a computer and communications network." The original and current filing basis is § 1A.

ANSWER TO OPPOSITION

In response to the Opposition, it is asserted that:

A. The Applicant's use of the mark <Drunk Wall> is distinctive to Facebook's <The Wall> and it is unlikely to cause confusion or any false suggestion of a connection. Furthermore, the Applicant believes the term "wall" to be a part of the popular vernacular in the public domain and disputes facebook's pending efforts to limit use of the term to the general public on the world wide web.

The following answers each of the Opposers allegations:

1. Facebook is the world's leading provider of online social networking services and has been recognized in the top 5 most trafficked web sites of any kind in the world. As Facebook requires a login and registration protocol entirely different from the Applicant's intended site of the Drunk Wall launch at www.badapps.com/dwall, it is unlikely that users would be confused by the Opposer and Applicant's use of the mark. Though the Applicant used the facebook platform for a short time to develop Drunk Wall, it has been removed from facebook's site. Facebook did not request this but the Applicant feels it was implied since learning of facebook's opposition.

2. As of 2009, Facebook provides social networking services in 35 languages to over 175 million active users worldwide and not once has the Opposer used the term "Drunk Wall" in regards to the distinct activity of inebriated chatting and computer messaging. Facebook has always applied the "Wall" term generically to its 175 million users. Example A shows a facebook profile where the Opposer's users will not find THE WALL mark used as facebook claims with the definite article "The." Facebook refers to the space simply as WALL for its registered users. In contrast, the Applicant now requires specific registration for the less than 100 users of the distinct DRUNK WALL mark at www.badapps.com/dwall

3. As facebook provides tools for each user to create a Profile Page, the user must submit his real first and last name along with a password to access a space where facebook uses “The Wall” mark. Users may access the Applicants site only when they register separately to use the DRUNK WALL page providing a distinct username most commonly different from a real given name and a distinct password. Once those protocols are established, the user may dabble in on-line chat and shared mobile alerts in connection with the DRUNK WALL mark.

4. Facebook claims to offer on line chat and private messaging through the Wall mark. Yet, it only uses the term generically. Facebook offers chat generally when a user signs onto facebook by clicking in the lower right corner (see **Example A**). No mention of the THE WALL is ever made in connection with real time chatting nor is the literal phrase “the wall” ever utilized in the context of facebook. In contrast, the Applicant offers online chat and mobile alerts distinctly under the DRUNK WALL mark under the DRUNK WALL heading as this is the sole purpose of the web page and requires a specific login and password. The Applicant believes there is impossibility of confusion between the chatting feature on a user’s facebook page and the drunk wall chatting feature at badapps.com/dwall (**Example B**).

5. Facebook is owner of pending US Application Serial No. 78920335 for the mark “The Wall” professing a number of diverse functions. However, Facebook’s generic use of the “Wall” term does not differ in any way from the common public use of the term wall which the Applicant believes to be a term in the public domain referring to an everyday post or “wall post” on a web page. The applicant believes this practice was popularized by the website www.myspace.com but that the terminology was part of the public domain since the term “wall posting” pervaded as part of the popular vernacular prior to 2004. The applicant believes that an infinite number of websites allow users to currently “wall-post” on their pages. Notable uses can be seen by the student body of USC, University of Southern California, as seen in **Example C** from <www.wallposting.com>

Example D also shows the popular use of the term “wall posting” by popular travel editor Rick Steves taken from <www.ricksteves.com/graffiti> where the term Graffiti Wall is commonly used. Facebook asserts that its pending application was filed June 29, 2006 but as the mark has yet to be confirmed, the applicant believes that his intended use of the “Drunk Wall” mark will not result in confusion with facebook’s mark as users identify THE WALL on facebook solely within the context of facebook (they would identify a Facebook Wall with the qualifier “Facebook.”)The applicant believes it is common practice to identify any wall on the world wide web with its web location on the world wide web i.e. Myspace Wall, Friendster Wall, USCPostingWall, Rick Steve’s Graffiti Wall, Youtube Wall, Tattoo Wall, etc. Countless variations can even be found within facebook itself such as Advanced Wall, Super Wall, Bathroom Wall, etc.
(example E)

6. The applicant disputes Facebook’s assertion that it owns common law rights on “The Wall” mark. The applicant asserts that “The Wall” was a term that entered the public domain long before facebook lay claim to it June. 29, 2006.

7. Facebook claims it owns distinctive variations under “the wall” as suggestive marks. On information and belief, the applicant notes that the terms “Fun Wall” and “Super Wall” were also used in wide distribution by other entities and today terms such as “graffiti wall”, “bathroom wall” and “great wall” are pervasive on the world wide web (Example E). The applicant believes these to be common uses of the term “Wall” which is a popular phrase used on the world wide web that without any qualifier is simply a generic word in the popular vernacular.

8. The Applicant filed the application Serial No. 77482477 published in the official gazette October 21st 2008 and intends to use the Drunk Wall mark so inebriated users may specifically chat online or send mobile notifications to one another so as to gauge each other’s state of inebriation.

9. The Opposer states that services provided by “Drunk Wall” overlap with the services provided by Facebook’s THE WALL pending trademark. Facebook already allows distinctive applications by third parties to keep running using the term WALL. Within facebook the following applications can be found not owned by facebook. <Advanced wall, Private Wall, Bathroom wall, Graffiti Wall, My Tattoo Wall, Great Wall>

10. The applicant provided the Unpublished prototype of Drunk Wall url to Facebook’s attorneys at Cooley on their request with the intent to find out if any portion of the Applicant’s prototype would be objectionable to Facebook. The Opposer did not make any suggestions how the unpublished Drunk Wall prototype could co-exist with Facebook. The unpublished Drunk Wall application has since been removed and will no longer be found on facebook’s platform. The application is relocated at <www.badapps.com/dwall/> A separate login and password are required so as to prevent any association with facebook. It is the applicant’s belief that attorneys at Cooley had no intention of working with the applicant and he has therefore taken steps to remove any remote associations with facebook. Note that the post add redirect url has been eliminated and the unpublished application trial itself has been taken out of circulation.

To restate: the applicant is NOT using DRUNK WALL in connection with the Facebook website.

11. The distinctive quality of the “DRUNK WALL” mark is unlikely to cause confusion with facebook’s use of THE WALL mark. Facebook’s WALL service is designed specifically for its millions of registered users. Facebook does not address the needs or concerns on a segment of consumers who are inebriated nor does it provide the opportunity for mobile phone alerts which will advise the segment of the inebriated population when it is best for them to correspond with one another. The applicant believes this makes the use of DRUNK WALL distinctive and unlikely to cause confusion. The intended use of the DRUNK

WALL mark is unique to facebook's use. Furthermore, the Applicant believes Facebook's trademark application to be in conflict the broad array of modern day software applications and web pages that today freely use the term "wall" as part of the public domain. The applicant believes that the qualifying term <drunk> is necessary to identify the <Drunk Wall> mark as distinctive and that facebook' wish to trademark <The Wall> solely with use of the generic definite article <THE> as a qualifier would meet resounding opposition by the public were it advertised. It is the Applicant's belief that trade marking the word "the Wall" would be the equivalent of trade marking "the Cola" or "the Cereal." The applicant believes that "Facebook Wall" is a more appropriate term for the Opposer's current use as in any given conversation between users, the qualifier "Facebook" would be needed in order to identify the mark which is being referred to.

12. Therefore, the Applicant believes there is no chance of confusion as Facebook's is attempting to co-opt a term from the public domain that would not be recognized by the public outside of the context of facebook. As the Applicant's DRUNK WALL mark can no longer be found within the context of facebook, and as it requires a separate registration and login, it is unlikely to cause any confusion with facebook's services.

13. Prior to the Applicant's filing of the DRUNK WALL application; facebook had attempted to acquire THE WALL mark. However, it is the applicant's belief that without any qualifying description such as "Facebook" WALL, the Opposer's legal wishes to be sole owner of a broad generic term used in the popular vernacular are unrealistic and should not be recognized.

ANSWER TO GROUNDS FOR OPPOSITION

14. The applicant incorporates by reference paragraphs 1 through 13, inclusive, as if fully set forth herein.

15. Applicant's DRUNK WALL mark is distinctive to Facebook's desired "THE

WALL” mark in appearance, sound, meaning and commercial impression.

16. The services described in the DRUNK WALL application are not related to services offered by the Facebook Wall or use of variations on how Facebook applies THE WALL.

17. The types of services offered by DRUNK WALL mark and Facebook’s WALL are not likely to cause confusion as DRUNK WALL is found on an entirely separate website with specific user login and password information needed.

18. The Applicant is developing the application to distinguish it from any use that facebook uses with its desired WALL mark even though facebook is attempting to covet a term generally used by the public domain.

19. As the Applicant has made no suggestion to users and makes no suggestion currently on its development site badapps.com/dwall. to be connected with goods and services provided by facebook.

20. As registration of the DRUNK WALL mark will not cause confusion or mistake or deceive and the Applicant has made every effort to respect facebook’s wishes and distinguish its goods and services only to registered users who specifically seek out DRUNK WALL.

21. The applicant wishes that the application be accepted, and that registration be issued thereon to The Applicant and that this opposition be dismissed with prejudice in favor of the Applicant.

Dated: March 24th, 2009

By: /Jeremy McNeill Lee/
520 Lakewood Circle
Walnut Creek, CA 94598
310-210-9821

Example A



Leland Kim

WallInfoBoxesVideo

Write something...

Share

Leland + FriendsJust LelandJust FriendsWall-to-Wall



Leland Kim**Pastime Paradise**

1) Put your iTunes on shuffle. 2) For each question, press the next button to get your answer. 3) YOU MUST WRITE THAT SONG NAME DOWN NO MATTER HOW SILLY IT SOUNDS! 4) Tag AS MANY FRIENDS AS YOU WANT who might enjoy doing the memo as well as the person you got the memo from...

3:48am · Comment · Like · Share

Deon J De Necker likes this.

Write a comment...



Ryan Gonzo Gonzalez Thanks for the lift, traveling in the Mustang is the only way to fly (or drive in this case). A Sunday evening bbq with friends is always a nice way to start off the week.

I liked Amy's fish eye lens suggestion. I'll need to ask her if I can borrow her camera and the lens from her friend sometime soon.

11:51pm

Advertise

Yes, You Can Afford I




Notifications

See

 Kimi Evans wrote on your Wall. 6 hours ago


 Emily Young made a comment about your photo. on Sunday

 Shannon Walden Baker made a comment about your photo. on Sunday

 Joshua David Timothy Murphy wrote on your Wall. on Saturday

 Leena Pendharkar also commented on Ulash Thakore Dunlap's photo. on Saturday

what we get; at we give." -



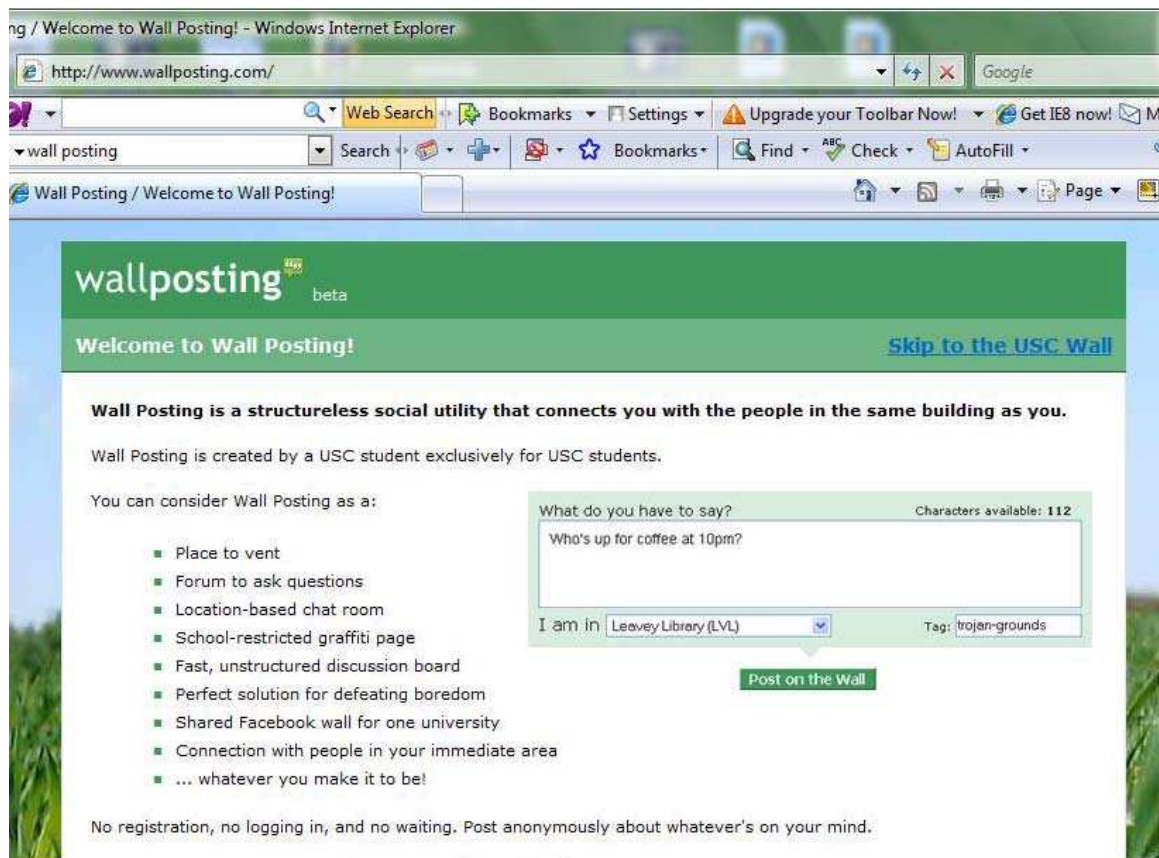
Internet | Protected Mode: On

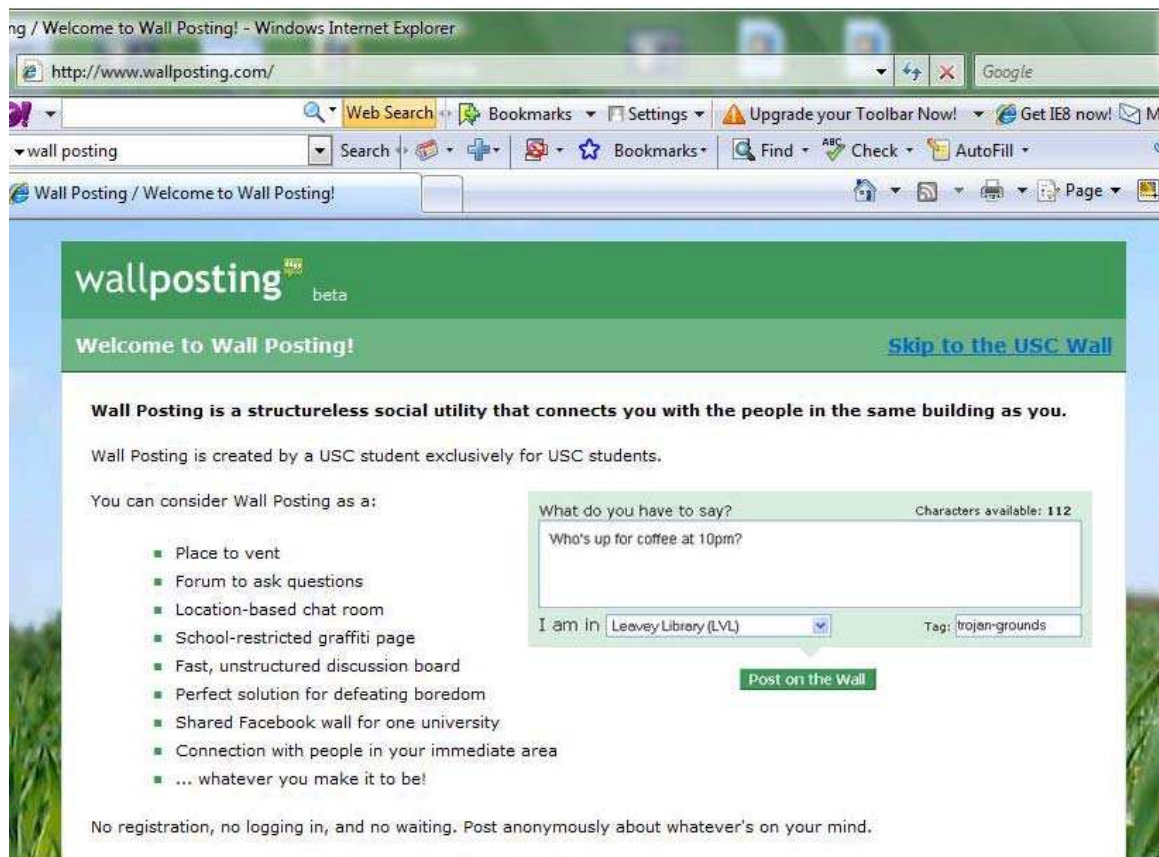
100%

Example B

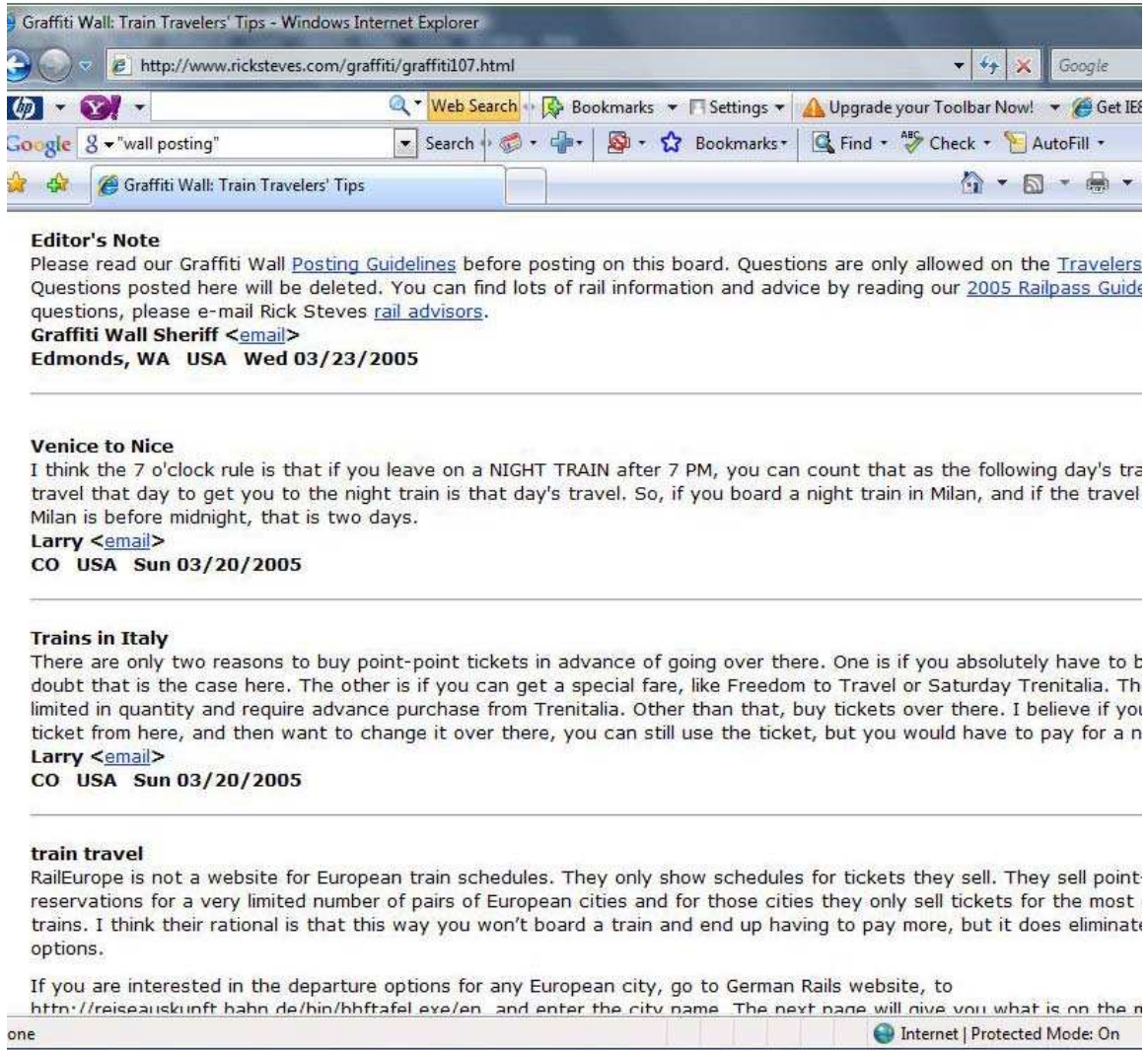


Example C





Example D



Example E

Facebook | Search: graffiti wall - Windows Internet Explorer

http://www.new.facebook.com/profile.php?id=575598012&ref=frmf#/s.php?sid=2165e841dc0ee75a7bec82c433f4daa9&init=q&

Web Search Bookmarks Settings Upgrade your Toolbar Now! Get IE8 r

funwall created by Search Bookmarks Find Check AutoFill




Sir David Frost Watergate I... Facebook | Search: graf... x

facebook Home Profile Friends Inbox 56 Jeremy Lee Settings Logout

graffiti wall Search Profile Search | Friend Finder

All Results Applications

Displaying 1 - 10 out of 14 application results for: **graffiti wall** 1 2 Next

	<p>Application: Super Wall</p> <p>Developer: RockYou!</p> <p>Description: The best way to find and share entertaining videos, pictures, graffiti, and more with your friends!</p> <p>Users: 16,065,806 monthly active users - 258 friends</p> <p>Matches: Application Name and Application Description</p> <p>View Application</p>
	<p>Application: Advanced Wall</p> <p>Developer: Advanced Wall</p> <p>Description: Advanced Wall allows you to change text size and color, share images, videos, graffiti, music, and much more with your friends.</p> <p>Users: 192,488 monthly active users - 59 friends</p> <p>Matches: Application Name and Application Description</p> <p>View Application</p>
	<p>Application: Graffiti</p> <p>Developer: Alex Onsager and Joachim De Lombaert</p> <p>Description: Taking Graffiti to a whole new level. Comments. Animated Replay. Save button. Advanced drawing interface. Check it out.</p> <p>Users: 4,669 monthly active users</p> <p>Matches: Application Name and Application Description</p> <p>View Application</p>